

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 20, 2005

Division: TDC

Bulk Item: Yes X No

Department:

Staff Contact Person: Maxine Pacini

AGENDA ITEM WORDING:

Approval of an Amendment to Agreement with the City of Marathon to exercise option to extend agreement for beach sand, beach repairs and beach maintenance at Sombrero and Coco Plum beaches for an additional five (5) year period to September 30, 2010.

ITEM BACKGROUND:

TDC approved same at their meeting of May 24, 2005.

PREVIOUS RELEVANT BOCC ACTION:

BOCC approved original Agreement at their meeting of June 21, 2001

BOCC approved Amendment to Agreement at their meeting of November 21, 2001

CONTRACT/AGREEMENT CHANGES:

Amendment to extend

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$115,887

COST TO COUNTY: \$115,887

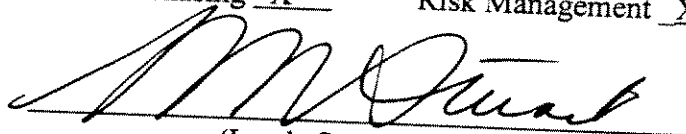
BUDGETED: Yes X No

SOURCE OF FUNDS: TDC

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


(Lynda Stuart)

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: City of Marathon

Contract # _____

Effective Date: 10/1/05

Expiration Date: _____

Contract Purpose/Description:

Approval of an Amendment to Agreement with the City of Marathon to exercise option to extend agreement for beach sand, beach repairs and beach maintenance at Sombrero and Coco Plum beaches for an additional five (5) year period to September 30, 2010.

Contract Manager: Maxine Pacini
(Name)

3523
(Ext.)

TDC # 3
(Department/Stop #)

for BOCC meeting on 7/20/05

Agenda Deadline 7/5/05

CONTRACT COSTS

Total Dollar Value of Contract: \$ 115,887

Current Year Portion: \$ _____

Budgeted? Yes ☒ No ☐

Account Codes

119-79040-530340-T69M-403-X-530340

Grant: \$ _____

County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ _____/yr

For: _____

(Not included in dollar value above)

(eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>4/28/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Smith</u>	<u>4/28/05</u>
Risk Management	<u>5-5-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Smith</u>	<u>5-5-05</u>
O.M.B./Purchasing	<u>4-29-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Shelia A. Barker</u>	<u>5/3/05</u>
County Attorney	<u>4/27/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>S. Hutton</u>	<u>4/27/05</u>

Comments: _____

AMENDMENT TO INTER-LOCAL AGREEMENT

THIS ADDENDUM to agreement is made and entered into this ____ day of ____ 2005, between the County of Monroe and The City of Marathon.

WHEREAS, there was a contract entered into on June 21, 2001, between the parties, to provide beach sand, beach repairs and beach maintenance at Sombrero Beach; and

WHEREAS, the contract was amended on November 21, 2001 for the addition of Coco Plum Beach; and

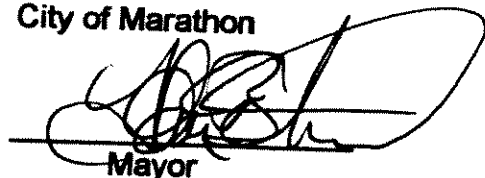
WHEREAS, the current contract provides an option to extend the agreement for an additional five (5) year period beyond the initial award period;

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree to the amended agreement as follows:

1. Contract period as outlined in Paragraph 1 as amended on November 21, 2001 be extended to September 30, 2010.
2. The remaining provisions of the contract dated June 21, 2001 remain in full force and effect.

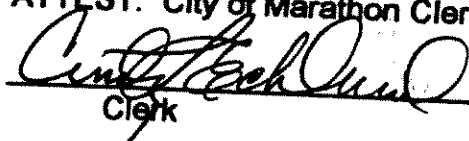
IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

City of Marathon


Mayor

(SEAL)

ATTEST: City of Marathon Clerk


Clerk

(SEAL)

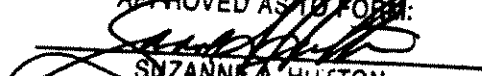
ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY
COMMISSIONERS OF
MONROE COUNTY, FLORIDA

Deputy Clerk

Mayor/Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY

Date

1/25/05



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3687

April 8, 2005

Maxine Pacini
Administrative Assistant
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, Florida 33040

RE: Inter-local Agreement for Sombrero Beach and Coco Plum Beach sand, beach repairs and beach cleaning and maintenance

Dear Ms. Pacini:

Thank you for your letter of April 7, 2005, regarding the above referenced agreement. The City of Marathon would very much like to extend the agreement for an additional five (5) year period.

Would modification of the agreement negate the possibility of the five year extension or would this be possible?

I would be interested in talking to whoever is required regarding the agreement.

I look forward to hearing from you. This funding is what keeps Marathon's beaches the desirable properties they are and the City appreciates Tourist Development Council's efforts.

Sincerely,

A handwritten signature in cursive script that reads "Susie Thomas".

Susie Thomas
Project Manager
City of Marathon

Cc: City Manger: Mr. Mike Puto

1 / 5

7

ADDENDUM TO AGREEMENT

This AGREEMENT dated the 21st day of Nov 2001, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, on behalf of the TOURIST DEVELOPMENT COUNCIL and the CITY OF MARATHON.

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, or promote museums, zoological parks, beaches, fishing piers, nature centers or sports arenas which are publicly owned and operated or owned and operated by not-for-profit corporations; and

WHEREAS, there was an Inter-local agreement entered into on June 21, 2001 between the parties to provide beach sand, beach repairs and beach maintenance at Sombrero Beach, and

WHEREAS, the contractor has since acquired the Coco Plum Beach; and

WHEREAS, Sombrero Beach and Coco Plum Beach require beach sand; beach repairs and beach cleaning and maintenance; and

WHEREAS, the ^{City} ~~Village~~ has the ability to act as manager for Sombrero and Coco Plum Beaches; and

WHEREAS, Paragraph 4 of the original agreement erroneously required a "work plan" in addition to the statement of scope of services contained in the agreement ;

NOW THEREFORE, the above parties agree as follows:

1. Paragraph 2 of the agreement shall read as follows:

The Contractor shall provide beach sand, beach repairs, beach maintenance and beach cleaning services for both Sombrero and Coco Plum Beaches.

2. Paragraph 3 of the agreement shall read as follows:

The County shall provide from tourist development tax funds an amount not to exceed \$78,501 to cover reimbursement of related expenses for beach sand, repairs and maintenance at Sombrero Beach for the year ending September 30, 2001. The County shall provide from tourist development tax funds an amount not to exceed \$115,887 to cover reimbursement of related expenses for beach sand, repairs, maintenance and cleaning at Sombrero and Coco Plum Beach for the year ending September 30, 2002. For each of the remaining years under this agreement, County shall pay from tourist development tax funds such amounts as are established within the TDC budget approved by the County prior to each fiscal year. The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award. Payment for expenditures permissible by law and County policies shall be made through reimbursement to Contractor upon presentation

of invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC.

3. Paragraph 4 of the agreement shall read as follows:

The Contractor shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of the Contractor to maintain appropriate records to insure a proper accounting of all funds and expenditures. The Contractor understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Contractor will be billed by the County for the amount of the audit exception and shall promptly repay any audit exception.



IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By:

Garnett Hancock
Deputy Clerk

By:

[Signature]
Mayor/Chairman

(SEAL)

ATTEST:

CITY OF MARATHON

By:

Katherine V. Sealehan
Secretary City Clerk

By:

[Signature]
VICE Mayor 11/14/01

Approved as for form and legal sufficiency:

By:

[Signature]
City Attorney

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY

[Signature]
ROZANNE A. HUTTON

DATE

10/15/01

**INTERLOCAL AGREEMENT
FOR
GRANT OF FUNDS**

This AGREEMENT dated the 21st day of JUNE 2001, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and the City of Marathon, hereinafter "Contractor".

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, or promote museums, zoological parks, beaches, fishing piers, nature centers or sports arenas which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Contractor has applied for funding for sand replacement, beach cleaning and maintenance at Sombrero Beach, hereinafter "the Project"; and

WHEREAS, Contractor has the ability to act as manager for the project; and

WHEREAS, the County and TDC have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to acquire, construct, repair and rehabilitate the project for use as a beach open to the public;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the Contractor and the County have entered into this agreement on the terms and conditions as set forth below.

1. **AGREEMENT PERIOD.** This agreement is for the period October 1, 2000 through September 30, 2005, unless earlier terminated pursuant to and in compliance with paragraphs 7, 11 and 12 below. The County has an option to extend this agreement for an additional five (5) year period beyond the initial award period, upon giving at least sixty (60) days prior written notice of agreement extension to Contractor.

2. **SCOPE OF AGREEMENT.** The Contractor shall provide beach sand; beach repairs and beach maintenance at Sombrero Beach.

3. **AMOUNT OF AGREEMENT AND PAYMENT.** The County shall provide from tourist development tax funds an amount not to exceed \$78,501 to cover reimbursement of related expenses for beach sand, repairs and maintenance at Sombrero Beach for the year ending September 30, 2001. For each of the remaining years under this agreement, County shall pay from tourist development tax funds such amounts as are established within the TDC budget approved by the County prior to each fiscal year. The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award. Payment for expenditures permissible by law and County policies shall be made through reimbursement to Contractor upon presentation of invoices, canceled checks and other documentation necessary to support a claim for reimbursement. Monroe County's performance

and obligation to pay under this agreement is contingent upon annual appropriation by the BOCC.

4. REPORTS. The Contractor shall provide financial reports in summary of activity on forms provided or approved by the TDC, and quarterly narrative reports of activity under the approved work plan. The Contractor shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of the Contractor to maintain appropriate records to insure a proper accounting of all funds and expenditures. The Contractor understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Contractor will be billed by the County for the amount of the audit exception and shall promptly repay any audit exception.

5. MODIFICATIONS AND AMENDMENTS. Any and all modifications of the terms of this agreement shall be only amended in writing and approved and executed by both parties.

6. INDEPENDENT CONTRACTOR. At all times and for all purposes hereunder, the Contractor is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed as to find the Contractor or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

7. COMPLIANCE WITH LAW. In carrying out its obligations under this agreement, the Contractor shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this agreement and shall entitle the County to terminate this agreement immediately upon delivery of written notice of termination to the Contractor.

8. RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT. The Contractor shall include in all agreements funded under this agreement the following terms:

a) Anti-discrimination. Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) Anti-kickback. Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in Contractor. For breach or violation of this warranty, the Contractor shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding

for this agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the Project.

c) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

9. ANTI-DISCRIMINATION. The Contractor agrees that they will not discriminate against any of their employees or applicants for employment or against persons for any benefit or service because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

10. ANTI-KICKBACK. The Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

11. TERMINATION. This agreement shall terminate upon notice of termination to the City of Marathon. Termination prior thereto shall occur whenever funds are not obtained or are not continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds are not continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Contractor. The County may terminate this agreement without cause upon giving a thirty (30) day written notice of termination to Contractor. The County shall not be obligated to pay for any services or goods provided by Contractor after Contractor has received written notice of termination. The Contractor is eligible for all reimbursement of expenses incurred prior to written termination notice.

12. TERMINATION FOR BREACH. The County may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions.

13. ENTIRE AGREEMENT. This agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between the Contractor and the County.

14. CONSENT TO JURISDICTION. This agreement, its performance, and all disputes arising hereunder, shall be governed by the laws of the State of Florida, and both parties agree that the proper venue for any actions shall be in Monroe County.

15. ETHICS CLAUSE. Contractor warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

16. PUBLIC ENTITY CRIME STATEMENT. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on a agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Contractor, supplier, sub-contractor, or consultant under a agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

17. AUTHORITY. Contractor warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Contractor below certifies and warrants that the Contractor's name in this agreement is the full name as designated in its corporate charter (if a corporation); they are empowered to act and contract for the Contractor, and this agreement has been approved by the Board of Directors of Contractor or other appropriate authority.

18. LICENSING AND PERMITS. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

19. INSURANCE. The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims within the limitations of Florida Statute 768.28 and 440, arising out of the activities governed by this agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the County that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related to this agreement.

Each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

20. NOTICE. Any written notice to be given to either party under this agreement or related hereto shall be addressed and delivered as follows:

For City of Marathon:

Mayor Robert K. Miller
City of Marathon
11090 Overseas Highway
Marathon, FL 33050

For County:

Lynda Stuart
Monroe County Tourist Development Council
1201 White Street, Suite 102
Key West, FL 33040
and
Suzanne Hutton, Asst. County Attorney
310 Fleming St.
Key West, FL 33040

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first above written.



DANNY L. KOLHAGE, CLERK

By:

James H. Hannon
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By:

George R. Neugart
Mayor/Chairman

(SEAL)

ATTEST:

By:

Katherine V. Selchan
~~Secretary~~
City Clerk

CITY OF MARATHON

By:

[Signature]
Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY

Suzanne A. Hutton
SUZANNE A. HUTTON

DATE

4/26/01